ceeding, and the question relevant to the matter in hand, it does not appear why a witness should be allowed any more extensive privileges than if he were in a court of law.

In what classes of investigation a legislative body has the power to compel testimony is a difficult question. It must be confined to investigation conducted for the purpose of aiding a branch of the legislature in the performance of its constitutional functions. *Kilbourn* v. *Thompson*, 103 U. S. 168. In the present case, however, it is reasonably apparent that the investigation was undertaken to enable the Senate to take measures for the censure or expulsion of certain of its members, if it should see fit to do so, under its express constitutional power. Whether an inquiry for the purpose of obtaining information to assist the legislators in framing laws would be considered by the courts as equally within the constitutional powers of the Houses of Congress has never been decided. In New York, however, such investigations by a branch of the legislature have been upheld. *People ex rel. McDonald* v. *Keeler*, 99 N. Y. 463.

In the case of *In re Chapman*, the obstinate witness, it will be observed, was not punished directly by the Senate for contempt, but convicted by the courts under a general statute providing for the punishment of such offences as misdemeanors. If the Houses have the power to compel persons to give testimony, it does not appear how there can be any objection to the constitutionality of a statute enacted to aid them in the exercise of that power; and the only reasonable construction of such a statute is that it was intended to apply solely to those who refuse to answer questions properly asked of them in the course of a lawful proceeding. The possibility that one of the Houses might institute such an investigation for unjustifiable purposes is no reason why they should not be given every aid towards the efficient prosecution of their investigations, so long as the propriety of such proceedings in any instance is subject to the judgment of the courts.

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Prospective Damages. — In a recent case in Ohio, *Wolf* v. *Cincinnati Edison Electric Co.*, Ohio Legal News, March 27, 1897, the trial court allowed prospective damages for the depreciation in value of the plaintiff's land, due to a nuisance arising from the operation of an electric plant belonging to the defendant. Upon reviewing the case, the Court of Common Pleas refused to allow these damages, owing to a defect in the pleadings; but the court agreed to admit them if the plaintiff would amend his pleadings by treating the nuisance as if it were permanent, and would agree to waive his claim to damages in future actions upon the continuance of the nuisance.

The general rule in this class of cases, where the injury comes not from a single act but from the continuance of certain acts, is that prospective damages are allowed only when the nuisance is by its nature permanent. They cannot be recovered if the cause of the injury may be abated. It is only when harm is done by a strictly permanent structure that the damage can be looked upon as coexistent with the structure which causes it. In the present case the court extends this doctrine: if the plaintiff elects to treat a nuisance which is likely to continue in the future as permament, he can recover prospective damages. Undoubtedly reliance is placed upon the analogy of certain railroad cases, where it is held that a railroad causing injury by a

structure, which, though not necessarily permanent, is built under authority of law, is liable for future damages, if the injured party so pleads his case. *Railroad Co.* v. *Anarews*, 26 Kan. 702. In these cases the operation of the structure is lawful, and cannot be stopped by injunction. Even though not permanent, it is potentially permanent. It will always be lawful; the law therefore permits the injured party to assume that it will always continue. This principle, however, has no application when the operation of the structure is neither permanent nor lawful, as in the case under consideration. *Harmon* v. *Railroad*, 87 Tenn. 614; Sedgwick on Damages, 8th ed., vol. 1, § 95. Nothing appears from the reported case to show that the electric plant was operated by any authority of law. Its operation was illegal, and could be abated; and to say that the plaintiff may at his election recover prospective damages is equivalent to saying that the plaintiff has the right to deprive the defendant of his liberty to repent his wrongdoing, and restore the former condition of affairs, after repairing the damages he has actually inflicted. If, after paying damages for a permanent wrong, the defendant were to stop his factory and abate the nuisance, he would be in the anomalous position of having been punished for wrongful acts which he never had committed and which he never would commit. This conclusion cannot be supported.

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CONTRACT VOID ON GROUNDS OF PUBLIC POLICY. — When an attorney enters into a contract, a part of the consideration of which involves an endeavor to prevent the finding of an indictment against his client, the contract is void from considerations of public policy. Its invalidity does not depend upon the question whether the attorney acted in bad faith, or whether he did any acts under the contract contrary to law. This is the decision of the Supreme Court of Ohio in the case of *Weber* v. *Shay and Cogan*, 56 Ohio, 51. This result is reached by an application of the principle that contracts repugnant to the general policy of the common law will not be enforced. In applying this doctrine the courts are forced to meet two opposing tendencies in the development of the law. On the one hand is the fundamental principle that contracts in general, when they satisfy formal requirements, are by their nature enforceable; and that it is arrogance on the part of the courts to consider them in their unlegal aspect from the point of view of policy. In opposition to this has grown up another more modern tendency of the law to look upon certain classes of contracts as immoral, and to impose upon the courts the responsibility of refusing to enforce them.

No one can doubt the propriety of the courts' refusing to enforce contracts to do an illegal act. In this the courts do not take it upon themselves to decide what is illegal; that is decided for them by statute and by the common law, which they merely interpret. The next step is more dangerous; some agreements are held void where the express acts promised are not strictly illegal, but only against public policy. In this matter the courts must create the law. Thus contracts to stifle criminal prosecutions are not enforced; nor contracts to pay money for immoral intercourse, to use unprincipled personal influence in order to pervert legislation, or to abstain from giving evidence in a pending suit. In all of these cases it is clear that the acts, though not illegal, prevent the even working of public affairs; public opinion undoubtedly condemns them; and the courts are not likely to be criticised for interfering.